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**ENGROSSED SUBSTITUTE HOUSE BILL 2222**

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**State of Washington 65th Legislature 2017 3rd Special Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Cody and Manweller; by request of Insurance Commissioner)

AN ACT Relating to protection of information obtained to develop or implement an individual health insurance market stability program; reenacting and amending RCW 42.56.400; adding a new section to chapter 48.02 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 48.02 RCW to read as follows:

(1) For the purposes of developing or implementing an individual health insurance market stability program, any reports, data, documents, or materials that health carriers submit to or receive from the United States department of health and human services as part of any health and human services operated risk adjustment or reinsurance program, or that the Washington state health insurance pool, established under chapter 48.41 RCW, prepares for purposes of this section that are obtained by, disclosed to, or in the custody of the commissioner, regardless of the form or medium, are confidential and are not subject to public disclosure under chapter 42.56 RCW. The commissioner shall not disclose these reports, data, documents, or materials except in the furtherance of developing and implementing an individual health insurance market stability program.

(2) For the purposes of this section:

(a) A health and human services operated risk adjustment or reinsurance program is any of the health insurance risk adjustment or reinsurance programs established under 42 U.S.C. Secs. 18061 and 18063. The reports, data, documents, and materials that are confidential under this section include all data and information carriers are required to provide to health and human services through the dedicated data environments required by 45 C.F.R. Sec. 153.700 et seq. for all health carriers participating in any health and human services health insurance risk adjustment or reinsurance program; and

(b) "Health carrier" has the same meaning as in RCW 48.43.005.

(3) The commissioner may:

(a) Share documents, materials, or other information, including the confidential documents, materials, or information subject to subsection (1) of this section, with contractors conducting actuarial, economic, or other analyses necessary to develop or implement an individual health insurance market stability program.

(b) Enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing claim of confidentiality or privilege in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Nothing in this section may be construed to authorize the commissioner to submit a complete application to the federal government for a waiver of any provision of federal law, including the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act, P.L. 111-152, or federal regulations or guidance issued under the affordable care act. The commissioner shall provide the joint select committee on health care oversight established by RCW 44.82.010 with a progress report prior to submitting a draft waiver application to the federal government.

(6) Reports, data, documents, and materials subject to this section are those obtained by the commissioner as of December 31, 2019.

**Sec.**  RCW 42.56.400 and 2016 c 142 s 20, 2016 c 142 s 19, and 2016 c 122 s 4 are each reenacted and amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30A.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Documents, materials, or information obtained by the insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential and privileged;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents, other than those described in RCW 48.02.210(2), that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275 and 48.02.210;

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017;

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730(5);

(24) Documents, materials, or information obtained by the insurance commissioner under chapter 48.05A RCW; ((~~and~~))

(25) Documents, materials, or information obtained by the insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents, materials, or information independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW 48.02.065; and

(26) Data, information, and documents obtained by the insurance commissioner under section 1 of this act.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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